



OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS  
JOHN CORNYN

June 14, 2001

Ms. Elaine S. Hengen  
Assistant City Attorney  
Office of the City Attorney  
City of El Paso  
2 Civic Center Plaza  
El Paso, Texas 79901-1196

OR2001-2528

Dear Ms. Hengen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 147828.

The El Paso Police Department (the "department") received a request for copies of the entire internal affairs case file for a certain former police officer, plus an audio tape recording of a certain meeting between that officer and the chief of police or the chief's staff. You have submitted as responsive Exhibits B through H, some of which you describe as representative samples of the information,<sup>1</sup> and claim that the requested information is excepted from disclosure under sections 552.101, 552.108, 552.114, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

The information at issue involves a completed investigation. Section 552.022 of the Government Code makes certain information expressly public, and therefore not subject to discretionary exceptions to disclosure. One such category of expressly public information under section 552.022 is "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by [s]ection 552.108[.]" Gov't Code § 552.022(a)(1).

---

<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

You assert that some of the requested information is confidential by law, and is, therefore, not subject to release under section 552.022. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses common law and constitutional privacy. For information to be protected by common law privacy it must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The *Industrial Foundation* court held that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. 540 S.W.2d at 685.

Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)).

Certain complaints against law enforcement officers are available to the public, and are not protected by a constitutional or common law right of privacy. *Ramie*, 765 F.2d at 492 (officer's name, name of complainant, nature of complaint, and law enforcement agency's disposition are public). See Open Records Decision No. 484 at 2 (1987) (interpreting the predecessor statute to section 552.101 of the Act); see generally Open Records Decisions Nos. 397 (1983), 350, 342, 329 (1982), 208 (1978). Additionally, with respect to privacy issues, this office has recognized that the public has a compelling interest in knowing about the allegations concerning the manner in which a city employee performs his job duties, the details of the investigation into those allegations, and the conclusions reached during that investigation. See Open Records Decision No. 400 at 3 (1983). Accordingly, we conclude that the information you have highlighted in Exhibit B is not confidential under section 552.101 and common law or constitutional privacy.

In addition, the submitted information includes compilations of criminal history information, and are therefore confidential under section 552.101. Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. See *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). In this case, we believe that the individual's right to privacy has been implicated. Thus, we conclude that you must withhold this information, which we have marked, under common law privacy as encompassed by section 552.101 of the Government Code. See *id.*

You also assert that section 552.101 makes portions of Exhibits F and H confidential under common law privacy because they contain personal financial information. This office has found that personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure under common law privacy. See Open Records Decision Nos. 600 (1992), 545 (1990). The highlighted financial information in Exhibit F and portions of the taped information in Exhibit H constitute financial information which is not connected to any transactions with the department. Accordingly, we agree that they must be withheld under section 552.101 and common law privacy.

With respect to the information in Exhibit D and a marked portion of Exhibit B, you contend that the information is excepted from disclosure under section 552.108(a)(2). Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You inform us that the information in Exhibit D is a copy of a criminal investigatory case appended to the internal affairs investigation report, and that the reference in Exhibit B is a direct reference to audio tape evidence obtained from the complainant in that same criminal case. You further inform us that the criminal case concluded in a result other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable to Exhibit D and the marked portion of Exhibit B, and that they may be withheld under that section.

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App. --Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976). Thus, with the exception of the basic front page offense and arrest information, you may withhold the information in Exhibit D and the marked portion of Exhibit B from disclosure based on section 552.108(a)(2).

Next, you claim that portions of the requested information are confidential under section 552.114 of the Government Code. Section 552.114 excepts from disclosure student records at an educational institution funded completely or in part by state revenue. Accordingly, section 552.114 does not apply because the department is not an educational institution. Thus, the department may not withhold any of the requested information under section 552.114.

You also claim exceptions to disclosure under section 552.117 of the Government Code for highlighted information in Exhibits B, C, F, and portions of Exhibit H, the audio tape. Section 552.117(2) excepts from required public disclosure the present and former home address or telephone number, social security number, and personal family member information of a peace officer as defined by article 2.12 of the Code of Criminal Procedure

regardless of whether the officer complies with section 552.024. We agree that portions of the information are confidential under section 552.117(2). We have marked information that must be withheld under section 552.117(2). In addition, those portions of the audio tape which reveal this information must be withheld under this section.

Driver's license numbers and license plate numbers appear in Exhibits B, E, and F. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

You must withhold the Texas driver's license numbers and license plate numbers which you have highlighted under section 552.130.

In summary, you must withhold the marked financial information in Exhibit F and the referenced portions of Exhibit H under section 552.101 and common law privacy. You must withhold the criminal history compilations under section 552.101 and *Reporters Committee*. You may withhold Exhibit D and the marked information in Exhibit B under section 552.108(a)(2). You must withhold the marked information in Exhibits B, C, F, and the referenced portions of Exhibit H under section 552.117(2). All driver's license and license plate numbers in Exhibits B, E, and F must be withheld under section 552.130. All the remaining information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

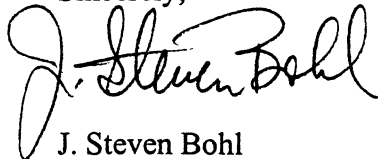
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



J. Steven Bohl  
Assistant Attorney General  
Open Records Division

JSB/sdk

Ref: ID# 147828

Encl: Marked documents

cc: Mr. Fred Haiman  
Staff Attorney  
CLEAT Legal Services  
747 E. San Antonio, #103  
El Paso, Texas 79901  
(w/o enclosures)